?BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

%DATED: 05.10.2018

*CORAM
THE HONOURABLE MS.JUSTICE V.M.VELUMANI

+C.M.A(MD) Nos.1237 of 2009
& 1291 of 2009

C.M.A(MD)No.1237 of 2009

#C.Sudalai ... Appellant/Petitioner

vs.
$1.P.Nataraj
2.National Insurance Company Ltd.,
through its Branch Manager,
No.74, A Paramathi Road,
Namakkal.

3.Marimuthu Pandy
4.The New India Assurance Company Ltd.,
through its Divisional Manager,
No.105, Railway Station Road,
Thiruppathur.
5.Sivakumar
(Respondents 1,3 & 5 are exparte
before the trial Court, hence
dispense with) ...Respondents/Respondents
PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against award made in M.C.O.P.No.1596 of 2005, on the file of the Motor Accident Claims Tribunal (Additional District Judge/Fast Track Court No.2), Tirunelveli, dated 24.06.2008.

!For Appellant : Mr.T.Selvakumaran
^For R1 : Ex~parte
For R2 : Mr.J.S.Murali
For R4 : Mrs.K.R.Shivashankari
for Mr.S.Srinivasa Raghavan
For R3 & R5 : No appearance
C.M.A(MD)No.1291 of 2009

National Insurance Company Limited,
Through its Branch Manager,
No.74~A, Paramathy Road,
Namakkal. ... Appellant/2nd Respondent
Vs.

1.Sudalai ...1st Respondent/Petitioner
2.Nataraj

3.Marimuthupandi
4.The New India Assurance
Company Limited,
Through its Branch Manager,
No.105, Railway Station Road,
Tirupathur.
5.Sivakumar ... Respondents 2 to 5/
Respondents 1,3,4 & 5

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award made in M.A.C.O.P.No.1596 of 2005, dated 24.06.2008 on the file of the Motor Accidents Claims Tribunal, Additional District Court/Fast Track Court No.2, Tirunelveli.
For Appellant : Mrs.K.R.Shiva Shankari
For R1 : Mr.T.Selvakumaran
For R4 : Mr.K.Murugesan
For R3 & R5 : No appearance

:COMMON JUDGMENT
Both the appeals arise out of same award passed in M.C.O.P.No.1596 of 2005 by the Motor Accident Claims Tribunal (Additional District Court/Fast Track Court No.2), Tirunelveli, and hence, both the appeals are disposed of by this Common Judgment.
2.The C.M.A(MD)No.1291 of 2009 is filed by the second respondent Insurance Company and the C.M.A(MD)No.1237 of 2009 is filed by the claimant.

3.The parties are referred to as per their rank in the claim petition.

4.The claimant filed the claim petition claiming a sum of Rs.10,00,000/~ as compensation, for the injuries sustained by him in the accident that occurred on 26.05.2005.

5.The Tribunal, considering the pleadings, oral and documentary evidence held that the accident occurred due to rash and negligent driving by driver of both vehicles and awarded a sum of Rs.4,55,000/~ as compensation and directed the respondents 1 & 2 to pay 50% of the amount and the respondents 3,4, & 5 to pay 50% of the amount.

6.Not being satisfied with the said award and fixing the 50% of the negligence, the second respondent Insurance Company has come out with the present appeal in C.M.A(MD)No.1291 of 2009 and for enhancement of compensation, the claimant has come out with the appeal in C.M.A.(MD)No.1237 of 2009.

7.The learned counsel appearing for the claimant contended that the claimant by examining the Doctor as P.W.2 proved that he suffered 100% disability and marking the documents. The Tribunal ought to have applied the multiplier for giving compensation. The amount awarded by the Tribunal for pain and suffering and extra nourishment are very meagre. The Tribunal ought

to have awarded a sum of Rs.3,00,000/~ for pain and sufferings. The Tribunal failed to grant any amounts towards loss of amenities and attendant charges.

8. The learned counsel appearing for the second respondent in C.M.A(MD)No.1237 of 2009 and the appellant in C.M.A(MD)No.1291 of 2009 contended that the accident occurred due to rash and negligent driving by driver of the Mini Lorry. The Tribunal without properly appreciating the evidence on record has erroneously held that the driver of both the vehicles are equally liable and directed the respondents 1 & 2 to pay 50% compensation. The cheque issued by the first respondent for premium for policy was returned as there was no sufficient funds to honour the cheque. The second respondent on return of cheque, cancelled the policy on 13.05.2005 and when the same was informed to owner of the vehicle/first respondent and Regional Transport Office, Bangalore and called upon the first respondent to return the policy issued. There was no valid insurance in existence on the date of accident and hence, the second respondent is not liable to pay any amount.

9.The learned counsel appearing for the fourth respondent in both the appeals contended that the accident occurred due to rash and negligent driving by driver of the other vehicle belonging to the first respondent. The Tribunal erroneously fixed the liability on the driver of the third respondent.

10.I have heard the learned counsel appearing on either side and perused the materials available on record.

11. The second respondent in the counter statement originally filed did not take a stand that the policy issued to first respondent was cancelled. Only after P.W.2 was examined, the second respondent filed additional counter and contended that the policy was cancelled and the claimant was informed about the cancellation of policy. The Tribunal considered the above facts and material on record rightly rejected the contention of the second respondent that there was no policy existence at the time of accident. There is no reason to interfere with said finding.

12.The claimant has let in evidence both oral and documentary and proved that due to the injuries sustained, he has totally immobilized. In such circumstances, this is fit case to apply the multiplier method. The claimant has not produced any documents to substantiate his claim for his age was 40 years at the time of accident and he was earning Rs.4,000/~ per month. In the Judgment reported in 2005(1) TNMAC Page 87 [United India Insurance Company Ltd., Tiruchengode vs. Veluchamy and another] the Division Bench of this Court held that the multiplier method cannot be applied mechanically in all the cases. Only if it is proved that the injury is totally immobilised, multiplier can be adopted and lessor multiplier can be adopted in the facts and circumstances of the case. Applying the ratio in the above said judgment, the notional income of the claimant is fixed at Rs.3,000/~ and applied the multiplier 10, the claimant is entitled to Rs.3,60,000/~ (3,000 x 12 x 10) for disability suffered by him.

13. The doctor examined as P.W.2 has deposed that the appellant is totally immobilised and he cannot do any work independently and can do even normal work only with the help of another person. In such circumstances, the appellant is entitled to loss of income for during and after treatment period.

14.Considering the nature of work done by the claimant, 12 months will be reasonable for calculating the loss of income. The appellant will be entitled to Rs.3,000 x 12 = 36,000/~. The amounts awarded by the Tribunal towards pain and suffering, extra nourishment and other heads are meagre.
15. In view of the settled position of law, this Court modifies the award of the Tribunal by enhancing the compensation in C.M.A.(MD)No.1237 of 2009, as under:~

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	For disability and loss of income	2,00,000	3,60,000	enhanced
2.	For pain and suffering, injuries and permanent disability	30,000	50,000	enhanced
3.	For medical expenses	2,00,000	2,00,000	confirmed
4.	For Transportation	15,000	15,000	confirmed
5.	Extra Nourishment	10,000	20,000	enhanced
6.	Loss of amenities			

20,000
awarded
7.
Attendant charges
~
20,000
awarded

Total
Rs.4,55,000
Rs.6,85,000
By enhancing a sum of Rs.2,30,000/~
16.It is to be noted that the Tribunal awarded a sum of Rs.30,000/~ towards pain and suffering, but the amount has been wrongly mentioned as Rs.3,000/~ instead of Rs.30,000/~ and the same is rectified.

17. In the result,
(i) The C.M.A(MD)No.1237 of 2009 is partly allowed, enhancing the award of the Tribunal from Rs.4,55,000/~ (Rupees Four Lakhs Fifty Five Thousand only) to a sum of Rs.6,85,000/~(Rupees Six Lakhs Eighty Five Thousand only) along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs;

(ii) The respondents 1 & 2 are directed to deposit the 50% of the amount and the respondents 3 & 4 are directed to deposit the 50% of the amount along with accrued interest and costs to the credit of M.C.O.P.No.1596 of 2005, on the file of the Motor Accident Claims Tribunal, (Additional District Judge/Fast Track Court No.II), Tirunelveli, within a period of eight weeks from the date of receipt of copy of this judgment;

(iii) On such deposit being made, the claimant is entitled to withdraw the said amount with interest by making necessary application before the Tribunal. No costs.

18.In the result, the C.M.A(MD)No.1291 of 2009 is dismissed. No costs.

To

1.The Motor Accident Claims Tribunal
Additional District Judge/Fast Track Court No.2,
Tirunelveli.

2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.